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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

9 Alfred E. Caraffa,

10 Plaintiff,

11 v.

12 CHS, et al.,

13 Defendants.

14 No. CV 20-00256-PHX-MTL (ESW)

15 **ORDER**

16 On February 3, 2020, Plaintiff Alfred E. Caraffa, who is confined in a Maricopa
17 County Jail, filed a pro se civil rights Complaint pursuant to 42 U.S.C. § 1983 (Doc. 1) and
18 an Application to Proceed In Forma Pauperis (Doc. 2). The Court will grant the
Application to Proceed and dismiss the Complaint with leave to amend.

19 **I. Application to Proceed In Forma Pauperis and Filing Fee**

20 The Court will grant Plaintiff's Application to Proceed In Forma Pauperis. 28
21 U.S.C. § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C.
22 § 1915(b)(1). The Court will not assess an initial partial filing fee. *Id.* The statutory filing
23 fee will be collected monthly in payments of 20% of the previous month's income credited
24 to Plaintiff's trust account each time the amount in the account exceeds \$10.00. 28 U.S.C.
25 § 1915(b)(2). The Court will enter a separate Order requiring the appropriate government
26 agency to collect and forward the fees according to the statutory formula.

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1 **II. Statutory Screening of Prisoner Complaints**

2 The Court is required to screen complaints brought by prisoners seeking relief
3 against a governmental entity or an officer or an employee of a governmental entity. 28
4 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff
5 has raised claims that are legally frivolous or malicious, that fail to state a claim upon which
6 relief may be granted, or that seek monetary relief from a defendant who is immune from
7 such relief. 28 U.S.C. § 1915A(b)(1)–(2).

8 A pleading must contain a “short and plain statement of the claim *showing* that the
9 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does
10 not demand detailed factual allegations, “it demands more than an unadorned, the-
11 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
12 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere
13 conclusory statements, do not suffice.” *Id.*

14 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
15 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,
16 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content
17 that allows the court to draw the reasonable inference that the defendant is liable for the
18 misconduct alleged.” *Id.* “Determining whether a complaint states a plausible claim for
19 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
20 experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s specific factual
21 allegations may be consistent with a constitutional claim, a court must assess whether there
22 are other “more likely explanations” for a defendant’s conduct. *Id.* at 681.

23 But as the United States Court of Appeals for the Ninth Circuit has instructed, courts
24 must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338, 342
25 (9th Cir. 2010). A “complaint [filed by a pro se prisoner] ‘must be held to less stringent
26 standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v. Pardus*, 551
27 U.S. 89, 94 (2007) (per curiam)).

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If the Court determines that a pleading could be cured by the allegation of other facts, a pro se litigant is entitled to an opportunity to amend a complaint before dismissal of the action. *See Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (en banc). Plaintiff's Complaint will be dismissed for failure to state a claim, but because it may possibly be amended to state a claim, the Court will dismiss it with leave to amend.

III. Complaint

In his four-count Complaint, Plaintiff seeks monetary damages from Defendants Maricopa County Sheriff's Office (MCSO), Maricopa County Sheriff Paul Penzone, "CHS," and MCSO Employee B1300.

In **Count One**, Plaintiff alleges he has been denied medical services. He contends he saw a doctor on January 2, 2020, about receiving female hormone treatment. Plaintiff alleges the doctor told him that he would need to have blood work done and that the doctor would see him in two weeks. Plaintiff asserts that although he has had the blood work done, Defendant CHS's staff is now telling him it will take 2-3 months to see the doctor. Plaintiff asserts this is depriving him of "treatment to choose [his] own sexual iden[t]ity" and his right to "choose to be who [he is]."

In **Count Two**, Plaintiff alleges he is being subjected to "torment and mental torture" in violation of the Eighth Amendment prohibition against cruel and unusual punishment. He contends that because he filed a civil action against a police department and another civil action against a prison medical company, "staff[,] as well as Sheriff's Deputies in their employment of their daily work habits" have used "word games and try to torment [Plaintiff]" with various comments.

In **Count Three**, Plaintiff alleges he is being subjected to retaliation in violation of the Eighth Amendment prohibition against cruel and unusual punishment. Plaintiff relates a lengthy tale about how: a Los Angeles County prosecutor conspired to kidnap him; he overheard detainees in a holding cell tell a story about a plan to kidnap him; he was held in a county jail after accepting a plea agreement; and he was ultimately released late because it took sixteen days to process his paperwork. He claims this led to a lawsuit

1 against the Los Angeles Sheriff, but when he tried to file the lawsuit, Defendant B1300
2 returned the complaint to Plaintiff, explaining that Inmate Legal Services would file a
3 lawsuit “for conditions of confinement in Maricopa County Jail, not for conditions of
4 confinement when [Plaintiff was] in a Los Angeles Jail.”

5 In **Count Four**, Plaintiff alleges he was denied access to the federal court, in
6 violation of his right to due process. First, he contends Defendant B1300 prevented him
7 from filing the civil action described in Count Three because “the federal courthouse was
8 outside Maricopa County.” Second, he asserts Defendant B1300 returned a 59-page first
9 amended complaint Plaintiff was attempting to file in *Caraffa v. Maricopa County Sheriff's*
10 *Department*, CV 20-00013-PHX-MTL (ESW) (D. Ariz.), because Defendant B1300
11 wanted clarification as to whether Plaintiff’s “evidence to support [the] amended
12 complaint” were attachments or separate filings and wanted Plaintiff to list the addresses
13 of two non-parties in that lawsuit. Plaintiff claims Defendant B1300 “sent back a time
14 limited case,” made copies of the amended complaint, and has been denying Plaintiff
15 access to the court as “a method of reta[li]ation as a method for su[]ing [the] Tempe Police
16 Dept. [a]nd an officer of that Department.”

17 **IV. Failure to State a Claim**

18 **A. Defendants MCSO and CHS**

19 Section 1983 imposes liability on any “person” who violates an individual’s federal
20 rights while acting under color of state law. Congress intended municipalities and other
21 local government units to be included among those persons to whom § 1983 applies.
22 *Monell v. Dept. of Soc. Serv. of City of New York*, 436 U.S. 658, 689-90 (1978). Maricopa
23 County Correctional Health Services is an administrative subdivision of Maricopa County.
24 It is not a municipal corporation, local governing body, or private corporation, and,
25 therefore, it is not a “person” amenable to suit under § 1983. Thus, the Court will dismiss
26 Defendant CHS.

27 The Maricopa County Sheriff’s Office is not a proper defendant because it is a “non-
28 jural entity.” *Melendres v. Arpaio*, 784 F.3d 1254, 1260 (9th Cir. 2015) (citing *Braillard*

1 *v. Maricopa County*, 232 P.3d 1263, 1269 (Ariz. Ct. App. 2010)). In Arizona, the
2 responsibility of operating jails and caring for prisoners is placed by law upon the sheriff.
3 See Ariz. Rev. Stat. § 11-441(A)(5); Ariz. Rev. Stat. § 31-101. A sheriff's office is simply
4 an administrative creation of the county sheriff to allow him to carry out his statutory duties
5 and is not a "person" amenable to suit pursuant to § 1983. Accordingly, the Court will
6 dismiss Defendant MCSO.

7 **B. Defendant Penzone**

8 To state a valid claim under § 1983, plaintiffs must allege that they suffered a
9 specific injury as a result of specific conduct of a defendant and show an affirmative link
10 between the injury and the conduct of that defendant. See *Rizzo v. Goode*, 423 U.S. 362,
11 371-72, 377 (1976). There is no respondeat superior liability under § 1983, and therefore,
12 a defendant's position as the supervisor of persons who allegedly violated Plaintiff's
13 constitutional rights does not impose liability. *Monell v. Dep't of Soc. Servs. of New York*,
14 436 U.S. 658 (1978); *Hamilton v. Endell*, 981 F.2d 1062, 1067 (9th Cir. 1992); *Taylor v.*
15 *List*, 880 F.2d 1040, 1045 (9th Cir. 1989). "Because vicarious liability is inapplicable to
16 *Bivens* and § 1983 suits, a plaintiff must plead that each Government-official defendant,
17 through the official's own individual actions, has violated the Constitution." *Iqbal*, 556
18 U.S. at 676. "A plaintiff must allege facts, not simply conclusions, that show that an
19 individual was personally involved in the deprivation of his civil rights." *Barren v.*
20 *Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998).

21 Plaintiff has not alleged that Defendant Penzone personally participated in a
22 deprivation of Plaintiff's constitutional rights, was aware of a deprivation and failed to act,
23 or formed policies that resulted in Plaintiff's injuries. Thus, the Court will dismiss without
24 prejudice Defendant Penzone.

25 **C. Defendant B1300**

26 Although pro se pleadings are liberally construed, *Haines v. Kerner*, 404 U.S. 519,
27 520-21 (1972), conclusory and vague allegations will not support a cause of action. *Ivey*
28 *v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). Further, a

1 liberal interpretation of a civil rights complaint may not supply essential elements of the
2 claim that were not initially pled. *Id.*

3 **1. Retaliation**

4 A viable claim of First Amendment retaliation contains five basic elements: (1) an
5 assertion that a state actor took some adverse action against an inmate (2) because of
6 (3) that prisoner's protected conduct, and that such action (4) chilled the inmate's exercise
7 of his First Amendment rights (or that the inmate suffered more than minimal harm) and
8 (5) did not reasonably advance a legitimate correctional goal. *Rhodes v. Robinson*, 408
9 F.3d 559, 567-68 (9th Cir. 2005); *see also Hines v. Gomez*, 108 F.3d 265, 267 (9th Cir.
10 1997) (retaliation claims require an inmate to show (1) that the prison official acted in
11 retaliation for the exercise of a constitutionally protected right, and (2) that the action
12 "advanced no legitimate penological interest"). The plaintiff has the burden of
13 demonstrating that his exercise of his First Amendment rights was a substantial or
14 motivating factor behind the defendants' conduct. *Mt. Healthy City School Dist. Bd. of
15 Educ. v. Doyle*, 429 U.S. 274, 287 (1977); *Soranno's Gasco, Inc. v. Morgan*, 874 F.2d
16 1310, 1314 (9th Cir. 1989).

17 Plaintiff's allegations are too vague and conclusory to support a conclusion that
18 Defendant B1300 refused to submit Plaintiff's lawsuit against the Los Angeles Sheriff or
19 returned for more information Plaintiff's amended complaint *because* Plaintiff had sued
20 the Tempe Police Department or a Tempe Police Officer, or *because* Plaintiff engaged in
21 some other protected conduct. Thus, the Court will dismiss without prejudice Plaintiff's
22 retaliation claim against Defendant B1300.

23 **2. Access to the Court**

24 The right of meaningful access to the courts prohibits officials from actively
25 interfering with inmates' attempts to prepare or file legal documents. *Lewis v. Casey*, 518
26 U.S. 343, 350 (1996). "[P]risoners have a right under the First and Fourteenth
27 Amendments to litigate claims challenging their sentences or the conditions of their
28 confinement to conclusion without *active interference* by prison officials." *Silva v.*

1 *DiVittorio*, 658 F.3d 1090, 1103 (9th Cir. 2011) (emphasis in original). As a matter of
2 standing for an access-to-courts claim, a plaintiff must show that he suffered an “actual
3 injury”—i.e., “actual prejudice with respect to contemplated or existing litigation, such as
4 the inability to meet a filing deadline or to present a claim.” *Lewis*, 518 U.S. at 348 (citation
5 omitted).

6 **a. Lawsuit Against the Los Angeles Sheriff**

7 Where a prisoner is asserting a backward-looking denial of access claim—one that
8 seeks a remedy for a lost opportunity to present a legal claim—he must show, among other
9 things, “the loss of a ‘nonfrivolous’ or ‘arguable’ underlying claim.” *Phillips v. Hust*, 477
10 F.3d 1070, 1076 (9th Cir. 2007), *vacated on other grounds*, 555 U.S. 1150 (2009). A
11 frivolous claim is one without arguable basis either in law or fact, *see Neitzke v. Williams*,
12 490 U.S. 319, 325 (1989), or one that has “little or no chance of success” because “the
13 factual allegations are ‘clearly baseless’ or the legal theories are ‘indisputably meritless.’”
14 *Carroll v. Gross*, 984 F.2d 392, 393 (11th Cir. 1993) (citations omitted). A plaintiff does
15 not have to show that his claim would have ultimately been successful on the merits,
16 *Phillips*, 477 F.3d at 1076, but he must show that it had arguable merit. *Lewis*, 518 U.S. at
17 353 n.3.

18 Plaintiff has alleged nothing that would allow the Court to conclude that Defendant
19 B1300’s refusal to submit the lawsuit against the Los Angeles Sheriff resulted in the loss
20 of a non-frivolous or arguably meritorious claim. Plaintiff does not provide any
21 information about the lawsuit against the Los Angeles Sheriff, other than noting that it
22 relates to Plaintiff being held in jail for sixteen days while his paperwork was processed.
23 Absent more, Plaintiff’s allegations are too vague and conclusory to state a claim against
24 Defendant B1300 regarding his refusal to submit the lawsuit against the Los Angeles
25 Sheriff. Thus, the Court will dismiss without prejudice this portion of Plaintiff’s access-
26 to-the-courts claim.

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b. Delay in Filing Amended Complaint in CV 20-00013

Plaintiff's amended complaint in CV 20-00013 was filed on February 3, 2020, well within the thirty-day deadline provided in the January 15, 2020 Order in that case. Thus, Plaintiff suffered no actual injury when Defendant B1300 returned the document to Plaintiff for clarification and additional information. *See also Davis v. Goord*, 320 F.3d 346, 352 (2d Cir. 2003) (“Mere ‘delay in being able to work on one’s legal action or communicate with the courts does not rise to the level of a constitutional violation.’”) (citations omitted); *cf. Silva*, 658 F.3d at 1104 (actual injury alleged where plaintiff claimed pending lawsuits had been dismissed as the result of defendants’ actions). The Court, therefore, will dismiss without prejudice this portion of Plaintiff’s access-to-the-courts claim.

12 | V. Leave to Amend

13 For the foregoing reasons, Plaintiff's Complaint will be dismissed for failure to state
14 a claim upon which relief may be granted. Within 30 days, Plaintiff may submit a first
15 amended complaint to cure the deficiencies outlined above. The Clerk of Court will mail
16 Plaintiff a court-approved form to use for filing a first amended complaint. If Plaintiff fails
17 to use the court-approved form, the Court may strike the amended complaint and dismiss
18 this action without further notice to Plaintiff.

19 Plaintiff must clearly designate on the face of the document that it is the “First
20 Amended Complaint.” The first amended complaint must be retyped or rewritten in its
21 entirety on the court-approved form and may not incorporate any part of the original
22 Complaint by reference. Plaintiff may include only one claim per count.

23 A first amended complaint supersedes the original Complaint. *Ferdik v. Bonzelet*,
24 963 F.2d 1258, 1262 (9th Cir. 1992); *Hal Roach Studios v. Richard Feiner & Co.*, 896 F.2d
25 1542, 1546 (9th Cir. 1990). After amendment, the Court will treat the original Complaint
26 as nonexistent. *Ferdik*, 963 F.2d at 1262. Any cause of action that was raised in the
27 original Complaint and that was voluntarily dismissed or was dismissed without prejudice

1 is waived if it is not alleged in a first amended complaint. *Lacey v. Maricopa County*, 693
2 F.3d 896, 928 (9th Cir. 2012) (en banc).

3 If Plaintiff files an amended complaint, Plaintiff must write short, plain statements
4 telling the Court: (1) the constitutional right Plaintiff believes was violated; (2) the name
5 of the Defendant who violated the right; (3) exactly what that Defendant did or failed to
6 do; (4) how the action or inaction of that Defendant is connected to the violation of
7 Plaintiff's constitutional right; and (5) what specific injury Plaintiff suffered because of
8 that Defendant's conduct. *See Rizzo*, 423 U.S. at 371-72, 377.

9 Plaintiff must repeat this process for each person he names as a Defendant. If
10 Plaintiff fails to affirmatively link the conduct of each named Defendant with the specific
11 injury suffered by Plaintiff, the allegations against that Defendant will be dismissed for
12 failure to state a claim. **Conclusory allegations that a Defendant or group of**
13 **Defendants has violated a constitutional right are not acceptable and will be**
14 **dismissed.**

15 **VI. Warnings**

16 **A. Release**

17 If Plaintiff is released while this case remains pending, and the filing fee has not
18 been paid in full, Plaintiff must, within 30 days of his release, either (1) notify the Court
19 that he intends to pay the unpaid balance of his filing fee within 120 days of his release or
20 (2) file a non-prisoner application to proceed in forma pauperis. Failure to comply may
21 result in dismissal of this action.

22 **B. Address Changes**

23 Plaintiff must file and serve a notice of a change of address in accordance with Rule
24 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other
25 relief with a notice of change of address. Failure to comply may result in dismissal of this
26 action.

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1 **C. Possible “Strike”**

2 Because the Complaint has been dismissed for failure to state a claim, if Plaintiff
3 fails to file an amended complaint correcting the deficiencies identified in this Order, the
4 dismissal may count as a “strike” under the “3-strikes” provision of 28 U.S.C. § 1915(g).
5 Under the 3-strikes provision, a prisoner may not bring a civil action or appeal a civil
6 judgment in forma pauperis under 28 U.S.C. § 1915 “if the prisoner has, on 3 or more prior
7 occasions, while incarcerated or detained in any facility, brought an action or appeal in a
8 court of the United States that was dismissed on the grounds that it is frivolous, malicious,
9 or fails to state a claim upon which relief may be granted, unless the prisoner is under
10 imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

11 **D. Possible Dismissal**

12 If Plaintiff fails to timely comply with every provision of this Order, including these
13 warnings, the Court may dismiss this action without further notice. *See Ferdik*, 963 F.2d
14 at 1260-61 (a district court may dismiss an action for failure to comply with any order of
15 the Court).

16 **IT IS ORDERED:**

17 (1) Plaintiff’s Application to Proceed In Forma Pauperis (Doc. 2) is **granted**.

18 (2) As required by the accompanying Order to the appropriate government
19 agency, Plaintiff must pay the \$350.00 filing fee and is not assessed an initial partial filing
20 fee.

21 (3) The Complaint (Doc. 1) is **dismissed** for failure to state a claim. Plaintiff
22 has **30 days** from the date this Order is filed to file a first amended complaint in compliance
23 with this Order.

24 (4) If Plaintiff fails to file an amended complaint within 30 days, the Clerk of
25 Court must, without further notice, enter a judgment of dismissal of this action with
26 prejudice that states that the dismissal may count as a “strike” under 28 U.S.C. § 1915(g)
27 and deny any pending unrelated motions as moot.

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1 (5) The Clerk of Court must mail Plaintiff a court-approved form for filing a
2 civil rights complaint by a prisoner.

3 Dated this 10th day of February, 2020.

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5 Michael T. Liburdi

6 Michael T. Liburdi
7 United States District Judge

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Instructions for a Prisoner Filing a Civil Rights Complaint in the United States District Court for the District of Arizona

1. **Who May Use This Form.** The civil rights complaint form is designed to help incarcerated persons prepare a complaint seeking relief for a violation of their federal civil rights. These complaints typically concern, but are not limited to, conditions of confinement. **This form should not be used to challenge your conviction or sentence.** If you want to challenge a state conviction or sentence, you should file a petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody. If you want to challenge a federal conviction or sentence, you should file a motion under 28 U.S.C. § 2255 to vacate sentence in the federal court that entered the judgment.
2. **The Form.** **Local Rule of Civil Procedure (LRCiv) 3.4(a) provides that complaints by incarcerated persons must be filed on the court-approved form.** The form must be typed or neatly handwritten. The form must be completely filled in to the extent applicable. All questions must be answered clearly and concisely in the appropriate space on the form. If needed, you may attach additional pages, **but no more than fifteen additional pages**, of standard letter-sized paper. You must identify which part of the complaint is being continued and number all pages. If you do not fill out the form properly, you will be asked to submit additional or corrected information, which may delay the processing of your action. You do not need to cite law.
3. **Your Signature.** You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
4. **The Filing and Administrative Fees.** The total fees for this action are \$400.00 (\$350.00 filing fee plus \$50.00 administrative fee). If you are unable to immediately pay the fees, you may request leave to proceed in forma pauperis. Please review the “Information for Prisoners Seeking Leave to Proceed with a (Non-Habeas) Civil Action in Federal Court In Forma Pauperis Pursuant to 28 U.S.C. § 1915” for additional instructions.
5. **Original and Judge's Copy.** You must send an **original plus one copy** of your complaint and of any other documents submitted to the Court. You must send one additional copy to the Court if you wish to have a file-stamped copy of the document returned to you. All copies must be identical to the original. Copies may be legibly handwritten. **This section does not apply to inmates housed at an Arizona Department of Corrections facility that participates in electronic filing.**
6. **Where to File.** You should file your complaint in the division **where you were confined when your rights were allegedly violated.** See LRCiv 5.1(a) and 77.1(a). If you were confined in Maricopa, Pinal, Yuma, La Paz, or Gila County, file in the Phoenix Division. If you were confined in Apache, Navajo, Coconino, Mohave, or Yavapai County, file in the Prescott Division. If you were confined in Pima, Cochise, Santa Cruz, Graham, or Greenlee County, file in the Tucson Division. **Mail the original and one copy of the complaint with the \$400 filing and administrative fees or the application to proceed in forma pauperis to:**

Phoenix & Prescott Divisions:
U.S. District Court Clerk
U.S. Courthouse, Suite 130
401 West Washington Street, SPC 10
Phoenix, Arizona 85003-2119

OR

Tucson Division:
U.S. District Court Clerk
U.S. Courthouse, Suite 1500
405 West Congress Street
Tucson, Arizona 85701-5010

7. **Change of Address.** You must immediately notify the Court and the defendants in writing of any change in your mailing address. **Failure to notify the Court of any change in your mailing address may result in the dismissal of your case.**

8. **Certificate of Service.** You must furnish the defendants with a copy of any document you submit to the Court (except the initial complaint and application to proceed in forma pauperis). Each original document (except the initial complaint and application to proceed in forma pauperis) must include a certificate of service on the last page of the document stating the date a copy of the document was mailed to the defendants and the address to which it was mailed. *See Fed. R. Civ. P. 5(a), (d).* Any document received by the Court that does not include a certificate of service may be stricken. **This section does not apply to inmates housed at an Arizona Department of Corrections facility that participates in electronic filing.**

A certificate of service should be in the following form:

I hereby certify that a copy of the foregoing document was mailed
this _____ (month, day, year) to:

Name: _____
Address: _____

Attorney for Defendant(s)

(Signature)

9. **Amended Complaint.** If you need to change any of the information in the initial complaint, you must file an amended complaint. The amended complaint must be written on the court-approved civil rights complaint form. You may file one amended complaint without leave (permission) of Court within 21 days after serving it or within 21 days after any defendant has filed an answer, whichever is earlier. *See Fed. R. Civ. P. 15(a).* Thereafter, you must file a motion for leave to amend and lodge (submit) a proposed amended complaint. LRCiv 15.1. In addition, an amended complaint may not incorporate by reference any part of your prior complaint. LRCiv 15.1(a)(2). **Any allegations or defendants not included in the amended complaint are considered dismissed.** All amended complaints are subject to screening under the Prison Litigation Reform Act; screening your amendment will take additional processing time.

10. **Exhibits.** You should not submit exhibits with the complaint or amended complaint. Instead, the relevant information should be paraphrased. You should keep the exhibits to use to support or oppose a motion to dismiss, a motion for summary judgment, or at trial.

11. **Letters and Motions.** It is generally inappropriate to write a letter to any judge or the staff of any judge. The only appropriate way to communicate with the Court is by filing a written pleading or motion.

12. Completing the Civil Rights Complaint Form.

HEADING:

1. Your Name. Print your name, prison or inmate number, and institutional mailing address on the lines provided.
2. Defendants. If there are **four or fewer** defendants, print the name of each. If you name **more than four** defendants, print the name of the first defendant on the first line, write the words “and others” on the second line, and attach an additional page listing the names of **all** of the defendants. Insert the additional page after page 1 and number it “1-A” at the bottom.
3. Jury Demand. If you want a jury trial, you must write “JURY TRIAL DEMANDED” in the space below “CIVIL RIGHTS COMPLAINT BY A PRISONER.” Failure to do so may result in the loss of the right to a jury trial. A jury trial is not available if you are seeking only injunctive relief.

Part A. JURISDICTION:

1. Nature of Suit. Mark whether you are filing the complaint pursuant to 42 U.S.C. § 1983 for state, county, or city defendants; “*Bivens v. Six Unknown Federal Narcotics Agents*” for federal defendants; or “other.” If you mark “other,” identify the source of that authority.
2. Location. Identify the institution and city where the alleged violation of your rights occurred.
3. Defendants. Print all of the requested information about each of the defendants in the spaces provided. If you are naming more than four defendants, you must provide the necessary information about each additional defendant on separate pages labeled “2-A,” “2-B,” etc., at the bottom. Insert the additional page(s) immediately behind page 2.

Part B. PREVIOUS LAWSUITS:

You must identify any other lawsuit you have filed in either state or federal court while you were a prisoner. Print all of the requested information about each lawsuit in the spaces provided. If you have filed more than three lawsuits, you must provide the necessary information about each additional lawsuit on a separate page. Label the page(s) as “2-A,” “2-B,” etc., at the bottom of the page and insert the additional page(s) immediately behind page 2.

Part C. CAUSE OF ACTION:

You must identify what rights each defendant violated. The form provides space to allege three separate counts (**one violation per count**). If you are alleging more than three counts, you must provide the necessary information about each additional count on a separate page. Number the additional pages “5-A,” “5-B,” etc., and insert them immediately behind page 5. Remember that you are limited to a total of fifteen additional pages.

1. **Counts**. You must identify which civil right was violated. **You may allege the violation of only one civil right per count.**
2. **Issue Involved**. Check the box that most closely identifies the issue involved in your claim. **You may check only one box per count.** If you check the box marked "Other," you must identify the specific issue involved.
3. **Supporting Facts**. After you have identified which civil right was violated, you must state the supporting facts. Be as specific as possible. You must state what each individual defendant did to violate your rights. If there is more than one defendant, you must identify which defendant did what act. You also should state the date(s) on which the act(s) occurred, if possible.
4. **Injury**. State precisely how you were injured by the alleged violation of your rights.
5. **Administrative Remedies**. You must exhaust any available administrative remedies before you file a civil rights complaint. *See 42 U.S.C. § 1997e.* Consequently, you should disclose whether you have exhausted the inmate grievance procedures or administrative appeals for each count in your complaint. If the grievance procedures were not available for any of your counts, fully explain why on the lines provided.

Part D. REQUEST FOR RELIEF:

Print the relief you are seeking in the space provided.

SIGNATURE:

You must sign your name and print the date you signed the complaint. Failure to sign the complaint will delay the processing of your action. Unless you are an attorney, you may not bring an action on behalf of anyone but yourself.

FINAL NOTE

You should follow these instructions carefully. Failure to do so may result in your complaint being stricken or dismissed. All questions must be answered concisely in the proper space on the form. If you need more space, you may attach no more than fifteen additional pages. But the form must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the complaint is being continued and number the pages.

Name and Prisoner/Booking Number

Place of Confinement

Mailing Address

City, State, Zip Code

(Failure to notify the Court of your change of address may result in dismissal of this action.)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

_____,
(Full Name of Plaintiff)

Plaintiff,

v.

(1) _____,
(Full Name of Defendant)

(2) _____,

(3) _____,

(4) _____,

Defendant(s).

Check if there are additional Defendants and attach page 1-A listing them.

CASE NO. _____
(To be supplied by the Clerk)

**CIVIL RIGHTS COMPLAINT
BY A PRISONER**

- Original Complaint
 First Amended Complaint
 Second Amended Complaint

A. JURISDICTION

1. This Court has jurisdiction over this action pursuant to:

- 28 U.S.C. § 1343(a); 42 U.S.C. § 1983
 28 U.S.C. § 1331; *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971).
 Other: _____.

2. Institution/city where violation occurred: _____.

B. DEFENDANTS

1. Name of first Defendant: _____ . The first Defendant is employed as: _____ at _____ .
(Position and Title) (Institution)
2. Name of second Defendant: _____ . The second Defendant is employed as:
as: _____ at _____ .
(Position and Title) (Institution)
3. Name of third Defendant: _____ . The third Defendant is employed
as: _____ at _____ .
(Position and Title) (Institution)
4. Name of fourth Defendant: _____ . The fourth Defendant is employed
as: _____ at _____ .
(Position and Title) (Institution)

If you name more than four Defendants, answer the questions listed above for each additional Defendant on a separate page.

C. PREVIOUS LAWSUITS

1. Have you filed any other lawsuits while you were a prisoner? Yes No
2. If yes, how many lawsuits have you filed? _____. Describe the previous lawsuits:
 - a. First prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____
 - b. Second prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____
 - c. Third prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____

If you filed more than three lawsuits, answer the questions listed above for each additional lawsuit on a separate page.

D. CAUSE OF ACTION

COUNT I

1. State the constitutional or other federal civil right that was violated: _____

2. **Count I.** Identify the issue involved. Check **only one**. State additional issues in separate counts.

Basic necessities Mail Access to the court Medical care
 Disciplinary proceedings Property Exercise of religion Retaliation
 Excessive force by an officer Threat to safety Other: _____.

- 3. Supporting Facts.** State as briefly as possible the FACTS supporting Count I. Describe exactly what each Defendant did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).

- ## **5. Administrative Remedies:**

- a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? Yes No

b. Did you submit a request for administrative relief on Count I? Yes No

c. Did you appeal your request for relief on Count I to the highest level? Yes No

d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. _____

COUNT II

1. State the constitutional or other federal civil right that was violated: _____

2. **Count II.** Identify the issue involved. Check **only one**. State additional issues in separate counts.

Basic necessities Mail Access to the court Medical care
 Disciplinary proceedings Property Exercise of religion Retaliation
 Excessive force by an officer Threat to safety Other: _____.

- 3. Supporting Facts.** State as briefly as possible the FACTS supporting Count II. Describe exactly what each Defendant did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

- 4. Injury.** State how you were injured by the actions or inactions of the Defendant(s).

- ## **5. Administrative Remedies.**

- a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? Yes No

b. Did you submit a request for administrative relief on Count II? Yes No

c. Did you appeal your request for relief on Count II to the highest level? Yes No

d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. _____

COUNT III

1. State the constitutional or other federal civil right that was violated: _____
_____.
_____.

2. **Count III.** Identify the issue involved. Check **only one**. State additional issues in separate counts.

Basic necessities Mail Access to the court Medical care
 Disciplinary proceedings Property Exercise of religion Retaliation
 Excessive force by an officer Threat to safety Other: _____.

3. **Supporting Facts.** State as briefly as possible the FACTS supporting Count III. Describe exactly what **each Defendant** did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

- 4. Injury.** State how you were injured by the actions or inactions of the Defendant(s).

5. **Administrative Remedies.**

 - a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? Yes No
 - b. Did you submit a request for administrative relief on Count III? Yes No
 - c. Did you appeal your request for relief on Count III to the highest level? Yes No
 - d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. _____

If you assert more than three Counts, answer the questions listed above for each additional Count on a separate page.

E. REQUEST FOR RELIEF

State the relief you are seeking:

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____
DATE

SIGNATURE OF PLAINTIFF

(Name and title of paralegal, legal assistant, or other person who helped prepare this complaint)

(Signature of attorney, if any)

(Attorney's address & telephone number)

ADDITIONAL PAGES

All questions must be answered concisely in the proper space on the form. If you need more space, you may attach no more than fifteen additional pages. But the form must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the complaint is being continued and number all pages.